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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

CHARLES AARON BROOKS,

Plaintiff,

v.

DR. FERNANDEZ, et al.,

Defendants.

Case No. EDCV 11-619-UA (MLG)

ORDER DENYING MOTION FOR
RECONSIDERATION

I. Introduction

On April 19, 2011, Plaintiff Charles Aaron Brooks, who was then an inmate at the Federal Correctional Institution-Victorville,¹ in Adelanto, California, lodged a complaint alleging civil rights violations under *Bivens v. Six Unknown Named Federal Narcotics Agents*, 403 U.S. 388 (1971). He also lodged a request for leave to commence the action without prepayment of fees. 28 U.S.C. § 1915(a)(1). On May 3, 2011, the Court denied the request to proceed without prepayment of fees, because Plaintiff had failed to make an adequate showing of indigency, had failed to authorize disbursements

¹ Plaintiff has since been transferred and is currently incarcerated in a federal prison in Tucson, Arizona.

1 from his prison trust account, and had failed to provide a certified
2 copy of trust funds statement for the previous six months, as
3 required by 28 U.S.C. § 1915(a)(2).

4 On July 18, 2011, Plaintiff filed a motion for reconsideration.
5 As part of that motion, Plaintiff mistakenly asserts that the Court
6 erred in dismissing the complaint for failure to state a claim upon
7 which relief may be granted.² In addition, Plaintiff asserts that he
8 is mentally ill. Finally, Plaintiff has attached the necessary
9 documents required for consideration of the prepayment waiver under
10 section 1915(a). Notwithstanding the filing of the appropriate
11 documentation, the motion for reconsideration and for leave to file
12 the action without prepayment of the filing fee shall be DENIED
13 because Plaintiff has had three or more cases dismissed on the basis
14 that they were frivolous, malicious, or failed to state a claim upon
15 which relief may be granted.

16 28 U.S.C. § 1915(g) is commonly known as the "three strikes"
17 provision of the Prison Litigation Reform Act of 1995 ("PLRA").
18 *Andrews v. King*, 398 F.3d 1113, 1116 n. 1 (9th Cir. 2005). Under
19 section 1915(g), a prisoner may not proceed *in forma pauperis* after
20 three or more actions filed by the prisoner while incarcerated have
21 been dismissed as frivolous, malicious, or for failure to state a
22 claim upon which relief may be granted. There is an exception to this
23 prohibition when the prisoner is under imminent danger of serious
24 physical injury. *Id.*

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27 ² The Court did not evaluate the merits of the complaint, but
28 rather found that Plaintiff had not established his entitlement to file
his complaint without prepayment of the filing fees.

1 In a previous case,³ the Court conducted a nationwide search of
2 the Public Access to Court Electronic Records (PACER) system, to
3 determine whether Plaintiff was eligible to file the action without
4 prepayment of the full filing fee. The Court's search revealed the
5 following: In *Brooks v. Ludwig*, Case No. 05-5795-RK (E.D. Penn.
6 2005), District Judge Robert F. Kelly, noted that Plaintiff had, on
7 three or more occasions, filed civil actions in federal court which
8 were dismissed as frivolous or for failure to state a claim upon
9 which relief may be granted. Leave to file without prepayment of a
10 filing fee was denied. In *Brooks v. Haynes*, Case No. 5:06CV4
11 (N.D.W.Va. 2005), the Court dismissed a civil rights action for
12 failure to state a claim upon which relief may be granted. In *Brooks*
13 *v. DeLoach*, Case No. 06-3317 (10th Cir. 2007), an appeal was
14 dismissed on the basis that it was frivolous. In *Brooks v. Spore*,
15 Case No. 09-477-MSD-Tem, the United States District Court for the
16 Eastern District of Virginia dismissed an action for failure to state
17 a claim upon which relief could be granted. Indeed, at the time of
18 the search, the Court counted at least 39 separate civil actions
19 filed by Plaintiff since he has been incarcerated.

20 The Ninth Circuit has repeatedly held that section 1915(g) is
21 constitutional, because "deterring frivolous lawsuits is rationally
22 related to a legitimate government interest." *O'Neal v. Price*, 531
23 F.3d 1146, 1153-54 (9th Cir. 2008); *Andrews*, 398 F.3d at 1123;
24 *Rodriguez*, 169 F.3d at 1180. "Filing an action [*in forma pauperis*
25 under section 1915] is a privilege, not a right." *Id.* (Fernandez,
26 J., concurring in part and dissenting in part). *See also Lewis v.*

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28 ³ *Brooks v. Fernandez*, Case No. EDCV 10-00423-R (MLG).


1 *Sullivan*, 279 F.3d 526, 530 (7th Cir. 2002) (listing seven ways that
2 prisoners can vindicate a claim outside the restraints of section
3 1915(g)). Enforcement of section 1915(g) would not violate
4 Plaintiff's constitutional rights.

5 Plaintiff has also not demonstrated that he is under imminent
6 danger of serious physical injury. Plaintiff's lawsuit alleges a
7 series of fanciful claims of assault and misconduct in 2009 and 2010
8 by numerous BOP employees who are employed at FCI-Victorville.⁴ To
9 the extent that the alleged assaults took place in FCI-Victorville
10 in 2009 and 2010, he is clearly not under imminent danger, given that
11 he is currently incarcerated in a prison facility in Arizona, in the
12 custody of different corrections officials.


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14 **III. Conclusion**

15 For the aforementioned reasons, it is ORDERED that the motion
16 for reconsideration be DENIED.

17 Dated: August 5, 2011

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20 _____
21 Audrey B. Collins
22 Chief United States District Judge

23 Presented By:

24 
25 _____
26 Marc L. Goldman
27 United States Magistrate Judge

28 ⁴ This is the same claim he has raised in numerous lawsuits across
the country, regardless of the institution in which he was
incarcerated.